



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Cr1.O.P. (MD) No.12192 of 2016

and

Cr1.M.P. (MD) .No.5793 of 2016

R.Mullaivanananathan ... Petitioner/Accused No.17

-Vs-

1.State rep. by
the Inspector of Police,
East Police Station,
Kumbakonam.
(Crime No.378 of 2008) ... 1st respondent/Complainant

2.G.Balakrishnan ... 2nd respondent/Defacto complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to quash the charge sheet in C.C.No.16 of 2010 on the file of the learned Judicial Magistrate Court, Kumbakonam, in Crime No.378 of 2008 on the file of the Inspector of Police, East Police Station, Kumbakonam.

For Petitioner : Mr.P.Yasmin Begum
For 1st respondent : Mr.P.Kandasamy,
Govt. Advocate (Cr1.Side)

O R D E R

This petition has been filed seeking to quash C.C.No.16 of 2010 pending on the file of the learned Judicial Magistrate, Kumbakonam, wherein the accused are facing trial for offences under Sections 188, 431, 341 IPC and Section 7(1) of the Criminal Law Amendment Act. The petitioner is Accused No.17 in the case.

2. The case of the prosecution is that the petitioner, along with 48 others, organized a public demonstration in front of RDO Office on 06.10.2008 in connection with suicide of one Veerasamy belonging to Kovilacheri Village and thus violated prohibitory order, prevented free flow of traffic and caused mischief to the general public at large.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first respondent. Despite service of notice to the second respondent/defacto complainant and his name has been printed in the cause list, there is no representation for him.



4. It is the contention of the learned counsel for the petitioner that there are two complaints lodged by the second respondent / defacto complainant on 07.10.2008 before the first respondent alleging that two incidents took place in the same course of action i.e., one at 10.30 a.m. with a list of 110 names and another at 11.30 a.m. with a list of 22 names. These two complaints came to be registered in Crime Nos.378 and 379 of 2008. Subsequently, two charge sheets have been filed on the same day and they have been taken on file in C.C.Nos.16 of 2010 and 17 of 2010 respectively by the learned Judicial Magistrate, Kumbakonam. Now, in this petition C.C.No.16 of 2010 is sought to be quashed by the petitioner/A17 on the following grounds;

(i) In respect of the same cause of action, there cannot be two FIRs and secondly, there cannot be two charge sheets, which are contrary to law and therefore, the case is liable to be quashed;

(ii) Out of 110 accused persons, 49 persons have been randomly selected out of whims and fancies, and not based on credible and reasonable information and therefore, the arbitrary fixing up of the accused itself is against the basic principal of Criminal law and therefore, the proceedings are liable to be quashed;

(iii) The prosecution under Section 188 IPC must be based on the complaint to be given under Section 195(1)(a) of Cr.P.C. The decision reported in **2008 Cri.L.J. 3576 (Jiwan Kumar Vs. State of Punjab and others)** is relied upon in respect of the said proposition; and

(iv) There is no specific overtact as against the petitioner/A17 in this case.

5.The learned Government Advocate (criminal side) appearing for the first respondent is not able to point out any specific allegation as against the petitioner / A17. More over, the grounds raised on the side of the learned counsel for the petitioner deserve and merit acceptance. Under such circumstances, the proceedings in C.C.No.16 of 2010 on the file of the learned Judicial Magistrate, Kumbakonam, is quashed in respect of the petitioner/A17.

6.This Criminal Original Petition is accordingly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True copy/



To:

1. The Judicial Magistrate Court, Kumbakonam.

2. The Inspector of Police,
East Police Station, Kumbakonam.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.P.Yasmin Begum, Advocate Sr.No.48739

gcg

sm:SKS-RR:18/10/2016:3P/5C

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